

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEMARIO MALONE,

Defendant.

No. 12-CR-30330-DRH

MEMORANDUM AND ORDER

HERNDON, District Judge:

On April 25, 2014, the Court sentenced Malone to 70 months imprisonment (Doc. 187) and the Clerk of the Court entered Judgment reflecting the same (Doc. 193). On September 4, 2014, Malone filed a motion for reduction of sentence pursuant to U.S.S.G. Amendment 782 (Doc. 215). On September 10, 2015, the Federal Public Defender's office entered an appearance (Doc. 217). Thereafter, on January 5, 2016, Assistant Federal Public Defender Ethan Skaggs moved to withdraw on the basis that he can make no non-frivolous arguments in support of a reduction pursuant to 18 U.S.C. § 3582(c) (Doc. 218). *See Anders v. California*, 386 U.S. 738, 744 (1967). Thereafter, the Court allowed Malone an opportunity to respond to the motion to withdraw (Doc. 219). As of this date, he has not done so.

Section 3582(c)(2) of Title 18 allows the Court to reduce a defendant's previously imposed sentence where "a defendant . . . has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered

by the Sentencing Commission pursuant to 28 U.S.C. 994(o).” In doing so, the Court must consider the factors set forth in 18 U.S.C. § 3553(a) and must ensure that any reduction “is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2). Thus, a defendant urging a sentence reduction under § 3582(c)(2) must satisfy two criteria: (1) the Sentencing Commission must have lowered the applicable guideline sentencing range, and (2) the reduction must be consistent with applicable policy statements issued by the Sentencing Commission.

Here, Malone is not entitled to a reduction in his sentence. In sentencing Malone, the Court utilized the current guidelines and Malone has already received the benefit of Amendment 782.

Accordingly, the Court **GRANTS** counsel’s motion to withdraw (Doc. 218) and **DENIES** Malone’s motion for a sentence reduction (Doc. 215).

IT IS SO ORDERED.

Signed this 10th day of February, 2016.

Digitally signed by
Judge David R.
Herndon
Date: 2016.02.11
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United States District Judge